IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2034 OF 2006

Shri Mohanlalji Shivnarayan Malani .. Petitioner.

V/s.

Shri Devikishan Chandmal & Ors. ..Respondents.

Mr. S.V. Dhakephalkar for the Petitioner.

CORAM : S. B. MHASE, J.

DATED : 24TH MARCH, 2006.

P.C.:

1. Heard. Perused the order passed by the Joint Charity Commissioner, Gr. Mumbai Region, Mumbai below Exh. 18 in Application No. 38/2003. It appears that by the amendment application the name of the original -opponent No.2 -one Shri Ramesh M. Malani is deleted and name of one Shri Nandkishor L. Sarda is added as an applicant.

2. The learned counsel for the petitioner submitted that the application under section 41-A is required to be filed by two persons having interest in the trust. However, the said application has been filed by one person only, namely, Devikishan Chandanmal Karwa and therefore, the application was not tenable and defect is

tried to be cured in view of the objection raised by the petitioner and therefore, the Charity Commissioner should have rejected the amendment application and equally the 41-A Application, since it was not filed by two interested persons.

3. No doubt to file application under section 41-A, it is necessary that there should be two interested persons as applicants. However, such a technical defect is cured by the proposed amendment. Even otherwise, it would have been appropriate for the respondents to withdraw and file a fresh application, joining Shri N.L.Sarda and that would have been a hyper technical exercise to cure the defect and therefore, the order does not suffer from any illegality so that this court shall interfere in the order.

4. The learned counsel submitted that it is not known whether Shri Sarda is having interest in the Trust. The point whether the applicant is having interest in the trust or not is always open to be considered in 41-A application and that is not foreclosed by the amendment.

5. The petition is disposed of.

24.03.2006 (S.B.MHASE,J)

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